

A. In entering into this Consent Order, the mutual objectives of EPA and Respondents are: (1) to determine fully the nature and extent of the release and/or threatened release at a portion of the

Ordinance Works Disposal Areas site ["Morgantown Site" or "Site"] (further described in "Attachment A" to this Consent Order) known as "Operable Unit No. 2" or "OU2" (further described in "Attachment B" to this Consent Order) ["Remedial Investigation"]; (2) to determine the nature and extent of the threat, if any, to the public health or welfare or the environment caused by any release or threatened release of hazardous substances, pollutants, and/or contaminants from OU2 ["Endangerment Assessment"], and (3) to determine and evaluate alternatives for remedial action, as appropriate under the National Oil and Hazardous Substance Pollution Contingency Plan ["NCP"], 40 C.F.R. Part 300, to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants from OU2 ["Feasibility Study"]. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP at 40 C.F.R. § 300.430(e) and remedial activities that utilize permanent solutions and alternative treatment technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by section 121 of CERCLA.

B. The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the NCP, 40 C.F.R. Part 300.

### III. FINDINGS OF FACT

EPA makes the following Findings of Fact:

A. The Morgantown Site is located in Monongalia County on the west bank of the Monongahela River approximately one mile south of the City of Morgantown, West Virginia ["Morgantown"] (see Attachment A" to this Consent Order). Morgantown operates a drinking water intake approximately one mile downstream from the Site. This water intake supplies Morgantown with seventy percent of its potable water.

B. The Morgantown Site has contained active chemical production facilities since the 1940s. Between 1943 and 1962, the United States held legal title to these facilities. Between 1941 and 1958 various operations were conducted by private parties, in some cases pursuant to government contracts and operating agreements, and in other cases pursuant to commercial leases. During this time the facilities were used to produce, among other substances, hexamine, ammonia, methyl alcohol, formaldehyde, ethylene diamine, and coke. As a result of manufacturing operations conducted by others under agreements and leases with the United States, hazardous substances were generated and subsequently disposed at the Site.

C. Pursuant to various agreements and contracts with the United States, Respondent DuPont acquired legal title to the Site in stages beginning in October 1940 and proceeded to construct and operate chemical production facilities at the Site for the war effort between October 1940 and 1945. Under those agreements and contracts, Respondent DuPont transferred legal title to the Site to the United States in December 1943. Between approximately 1940-1945, Respondent DuPont operated manufacturing facilities at the Site which produced, among other substances, ammonia, methanol, formaldehyde, hexamine, ethylene diamine, light oils, and tars.

D. Between approximately January 1951 and May 1958, Respondent Olin operated manufacturing facilities at the Site which produced, among other substances, methanol, formaldehyde, ethylene diamine, hexamine, ammonia, light oils, and tars.

E. Between approximately 1946-1950, Heyden Chemical Corporation operated manufacturing facilities at the Site which produced, among other substances, ammonia. Respondent Tenneco has agreed to perform the obligations of Heyden Chemical Corporation pursuant to this Consent Order.

F. As a result of the above-described operations, hazardous substances were generated and disposed of at the Site.

G. Between 1962 and 1978, the Site was owned by Morgantown Ordnance Works, Inc. During that time, Morgantown Ordnance Works, Inc. leased and/or sold portions of the Site for various industrial and chemical manufacturing activities. In 1964, Weston Chemical Company ["Weston"] purchased a small parcel within the Site from Morgantown Ordnance Works, Inc. Weston subsequently expanded its operations at the Site. This expansion continued after 1969, when Borg-Warner Corporation ["Borg-Warner"] purchased Weston, with the result that Borg-Warner ultimately operated two plants and laboratories on company-owned property amounting to approximately 62 acres within the Site. In 1988, General Electric Company ["GE"] purchased Borg-Warner's operations at the Site. The GE facilities are currently active.

H. The Site was acquired by Princess Coals, Inc. in 1978. This company did not actively lease or operate the on-site facilities.

I. In 1982, the Site was purchased by private individuals who later formed Morgantown Industrial Park, Inc. In 1983, the property was conveyed to Morgantown Industrial Park Associates ["MIPA"], the current property owner.

J. In April 1983, EPA performed a site inspection in areas located in the southern portion of the Morgantown Site and which were believed to be former waste disposal and handling areas used by the former tenants of industrial facilities in the northern

portion of the property. The areas investigated included a former landfill, waste lagoons, a "scraped" area, and a drum staging area. The inspection showed that several drums found on-site contained polychlorinated biphenyls ["PCBs"]; sediments collected from the scraped and landfill areas contained polynuclear aromatic hydrocarbons ["PAHs"] at concentrations exceeding 100 ppm; blue pellets collected from the surface of the former landfill contained zinc and copper; and a yellow solid material collected from the scraped area contained sulphur. Air monitoring results provided no indication of site-related airborne hazardous substances.

K. Between May and June 1984, MSES Consultants, Inc. ["MSES"], under contract to MIPA, performed additional sampling of all drums and subsequently disposed of most of the drums at an approved off-site facility.

L. In July 1984, EPA performed follow-up sampling to determine the effectiveness of the MIPA response work. Soils in the former drum staging area were found to contain PCBs in concentrations of 6 ppm, with one "hot spot" at which 229 ppm was detected; surface soils collected from the landfill and scraped areas and sediments collected adjacent to these areas contained PAHs at concentrations exceeding 700 ppm and 250 ppm, respectively; and inorganic substances such as arsenic, lead, nickel, zinc, chromium, copper, and mercury were identified in concentrations exceeding background levels in surface soils collected from the landfill and scraped areas.

M. In October 1984, MIPA removed PCB-contaminated soils from the former drum staging area and disposed of these soils at a licensed off-site facility.

N. The Morgantown Site was proposed for inclusion on the CERCLA National Priorities List ["NPL"] on October 1, 1984 and was promulgated to the NPL on June 6, 1986.

O. In March 1985, EPA initiated a Remedial Investigation and Feasibility Study ["RI/FS"] which focused primarily on the former drum staging area, lagoon areas, landfill, and scraped area. The RI/FS additionally called for the collection and analysis of surface soil and water samples at various locations in and around the complex of process buildings located in the northern portion of the Site and which are located within OU2.

P. The RI/FS report, issued in January 1988, documented the presence of hazardous substances, pollutants, and/or contaminants in the landfill, scraped area, and former lagoon areas. The report additionally indicated that copper, lead, and mercury were detected above background concentrations in a majority of sampling locations within the process building complex in OU2, and that the concentration of mercury exceeded the risk-based cleanup level at one sampling location.

Q. The discovery of releases and threatened releases of hazardous substances by EPA at those locations within the OU2 industrial complex sampled during the RI/FS causes EPA to suspect that there may be additional releases and/or threatened releases of hazardous substances, pollutants, and/or contaminants into the environment from OU2. Access to most of the area within OU2 by the public and wildlife is unrestricted and there is at least one currently active industrial plant at this location. The public and wildlife are therefore at risk of exposure to both detected and undetected hazardous substances, pollutants, and contaminants.

#### IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, EPA makes the following Conclusions of Law:

A. Operable Unit No. 2 of the Morgantown Site is a facility as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. Respondents are "persons" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Hazardous substances, as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed in OU2 and are currently present there.

D. The presence of hazardous substances in OU2 and the past, present, and/or potential migration of hazardous substances from OU2 constitutes an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

#### V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

A. All legal requirements for issuance of this Consent Order set forth in sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 & 9622, have been met.

B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

C. In accordance with section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Consent Order, if performed according to the terms of this Consent Order, will be done properly and promptly by the Respondents. EPA has also determined that Respondents are qualified to conduct such work.

**VI. PARTIES BOUND**

A. This Consent Order shall apply to and be binding upon Respondents and EPA; their respective agents, successors, and assigns; and upon all contractors, consultants, and other persons acting under or for Respondents and/or EPA. No existing ownership or control, or change therein, of any property covered by this Consent Order, or ownership or corporate status of any Respondent, or change therein, shall in any way alter, diminish, or otherwise affect Respondents' obligations and responsibilities under this Consent Order.

B. In the event of any change in ownership or control of any of the property covered by this Consent Order which is owned or controlled by any Respondent, Respondents shall notify EPA, in writing and at least thirty (30) days in advance of such change, of the name, address, and telephone number of the transferee in interest of such property; the proposed effective date of such transfer; and the nature of the proposed transfer or change. Respondents shall provide EPA with copies of any indemnification agreement(s) executed in connection with the transfer or change within five (5) days of the effective date of such agreement(s). Respondents shall provide a copy of this Consent Order to all transferees in interest prior to any agreement for transfer.

C. In the event of any change in ownership or control of any Respondent, Respondents shall notify EPA, in writing and at least thirty (30) days after the change, of the nature and effective date of the change. Respondents shall provide a copy of this Consent Order to the successor(s) to any Respondent before any proposed change becomes irrevocable.

D. The Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, consultants, and other persons retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) days of the effective date of this Consent Order or the date of retention, whichever is later. Respondents shall condition all contracts with such persons on compliance with the terms of this Consent Order. Notwithstanding the terms of such contracts, Respondents remain responsible for complying with the terms of this Consent Order and for ensuring that their contractors and agents comply with the requirements of this Consent Order.

E. Respondents are jointly and severally responsible for carrying out all actions required by this Consent Order.

**VII. NOTICE TO THE STATE**

Notice of issuance of this Order has been given to the State of West Virginia.

**VIII. WORK TO BE PERFORMED**

A. Respondents shall perform a Remedial Investigation/Feasibility Study at Operable Unit No. 2 of the Morgantown Site, as such operable unit is further described in "Attachment B" to this Consent Order, in accordance with the requirements of CERCLA, the NCP, this Consent Order (including any documents submitted as a requirement of this Consent Order), and relevant guidance documents. Respondents shall not be obligated hereby to perform any response work (including this RI/FS) on the parcels within OU2 containing active production facilities operated by General Electric Company and known as the "Westmar North Plant" and "Westmar South Plant." Discrete areas within OU2 to be studied pursuant to this Consent Order shall be further identified in the Work Plan to be submitted in accordance with this Section.

B. (1) All response work performed pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. Within twenty-eight (28) days after the effective date of this Consent Order, the Respondents shall notify EPA in writing regarding the identity of the contractor(s) and/or personnel to be used in carrying out such work. Respondents have a continuing obligation to provide written notification to EPA of changes in contractors and the retention of additional contractors and subcontractors hired to perform work pursuant to this Consent Order. Such notifications shall be submitted within ten (10) days of a change in contractors or the retention of additional contractors and subcontractors.

(2) EPA may disapprove at any time of the use of any contractor, subcontractor, or supervisory personnel EPA considers to be unqualified to perform the work, or any portion thereof, required under this Consent Order. In the event of a disapproval, Respondents shall notify EPA within twenty-eight (28) days of the person, contractor, or subcontractor that will replace the one that was disapproved. In the event of a subsequent disapproval of the replacement, EPA reserves the right to conduct a complete RI/FS, or any portion of the RI/FS, pursuant to CERCLA and the NCP and to seek reimbursement for the costs incurred.

C. (1) Within ninety (90) days after the effective date of this Consent Order, the Respondents shall submit to EPA a Work Plan ["WP"] for performance of the RI/FS. The WP shall be developed in accordance with EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (October 1988), shall be consistent with the NCP and section 121 of CERCLA, 42 U.S.C. § 9621, and shall establish a date-specific schedule for initiation and completion of each element of the RI/FS project.

(2) The WP shall identify all areas within OU2 in which all existing and former (post-1940) manufacturing/production operations and known and suspected waste disposal areas are located

and the procedures used by Respondents to identify such areas. For all areas so identified, the WP shall, among other things, describe the methods to be used by Respondents to:

- (a) fully characterize the source(s), nature and extent of contamination for all media, including ground water and surface/subsurface soils;
- (b) define the extent of surface and subsurface migration of such contaminants; and
- (c) identify actual and potential receptors.

In addition, the WP shall include, without limitation, a comprehensive summary of known conditions within OU2; a discussion of data gaps; methodology and logistics for obtaining information in order to meet the objectives of the RI/FS; data quality objectives; a discussion of endangerment and risk assessment; a sampling and analysis plan (including a Field Sampling Plan and a Quality Assurance Project Plan); a health and safety plan; and a comprehensive description of natural resources, including wetlands, within OU2.

(3) EPA shall review Respondents' WP and shall notify Respondents in writing of EPA's approval or disapproval of the WP or any portion thereof. In determining whether to approve the WP, EPA shall consider, among other things, the impact Respondent's methods to conduct the RI/FS may have on any other ongoing or proposed investigation(s) within OU2. In the event of any disapproval, EPA shall specify the deficiencies in writing. Within thirty (30) days of the receipt of any EPA notification of WP disapproval, the Respondents shall amend and submit to EPA a revised WP that responds to and/or remedies the specified deficiencies. If, after such revision, EPA continues to disapprove of Respondents' WP, EPA reserves the right to conduct a complete RI/FS, or any portion thereof, pursuant to CERCLA and the NCP and to seek reimbursement from the Respondents for the costs thereof.

(4) Upon approval by EPA, the WP shall be incorporated into this Consent Order and the terms and schedules therein shall become requirements of this Consent Order.

E. Respondents shall commence implementation of the EPA-approved WP in accordance with the terms and conditions of the WP and this Consent Order no later than thirty (30) days after receipt of EPA approval of the WP.

F. Beginning thirty (30) days after the effective date of this Consent Order and every thirty (30) days thereafter, Respondents shall submit to the EPA Project Coordinator a progress report detailing the work performed in the preceding thirty days. Each progress reports shall include, but not be limited to, (1)

a description of the actions undertaken pursuant to this Consent Order; (2) results of sampling and tests, analytical data, and all other information and interpretations of such information gathered by Respondents in the course of complying with this Consent Order; (3) a description of all data anticipated and activities scheduled for the succeeding thirty (30) day period; and (4) a description of any problems encountered or anticipated in carrying out the terms of this Consent Order.

G. Respondents shall submit preliminary and final reports, including the Remedial Investigation/Feasibility Study report, in accordance with the schedules set forth in the approved WP. EPA shall review these reports and shall notify the Respondents in writing of its approval or disapproval of such reports or any portions thereof. In the event of a disapproval, EPA shall specify the deficiencies in writing. Within thirty (30) days after receipt by Respondents of EPA disapproval (or such longer time as may be specified by EPA based upon the extent of noted deficiencies; provided that EPA's specification of, or failure to specify, such longer time shall be solely within EPA's discretion and shall not be subject to the dispute resolution procedures set forth in Section XIV of this Consent Order), Respondents shall amend and submit to EPA a revised report that responds to and/or remedies the deficiencies. If, after such revisions, EPA continues to disapprove of either report, EPA retains the right to amend such reports, to perform additional studies, and/or to complete the RI/FS, or any portion thereof, pursuant to CERCLA and the NCP and to seek reimbursement for the costs thereof.

#### **IX. DESIGNATED PROJECT COORDINATORS**

A. On or before the effective date of this Consent Order, the Respondents and EPA shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to this Consent Order, shall be directed to the Project Coordinators by certified mail.

B. EPA and the Respondents shall each have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least five (5) days prior to the change.

C. The EPA-designated Project Coordinator shall have the authority to, *inter alia*, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions, or portions thereof, when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.415. The absence of the EPA Project

Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage of work.

X. QUALITY ASSURANCE

A. The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised May, 1986, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," February 1983, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondents shall at a minimum:

- (1) Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.
- (2) Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(s), records, and personnel utilized by Respondents for analysis of samples collected pursuant to this Consent Order.
- (3) Prepare a Quality Assurance Project Plan ["QAPjP"] for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP is to be submitted to the EPA Project Coordinator for review and approval prior to initiating any field investigations. The QAPjP (and Sampling Plans if prepared as separate documents) must be submitted to EPA as part of the Work Plan required by Section VIII of this Consent Order. The purpose of the QAPjP is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. QAMS-005/80 shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA as requested.
- (4) Agree that laboratory(s) analyzing samples required by this Consent Order shall use the methods described by, and submit deliverables delineated in, the current "Statement of Work of the EPA Contract Lab Program." Current copies are available from the Environmental Services Division ("ESD") QA Section, Annapolis, Maryland at (301) 224-2740. If any parameter to be analyzed for is not one of the parameters for which CLP methods are available, the lab shall use methods which are EPA-approved (and which are to be described in the QAPjP).

(5) Agree that a laboratory(s) analyzing samples pursuant to this Consent Order may be asked to demonstrate its capability to perform analyses in compliance with CLP requirements through the analysis of Performance Evaluation ["PE"] samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or a state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Coordinator for verification.

(6) Conduct an audit of the laboratory(s) that will analyze samples from the Site at some point during the time the laboratory(s) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors should conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Respondents must report serious deficiencies and corrective actions must be taken within twenty-four (24) hours of the time the Respondents knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ["CLP Labs"] need not be audited.

(7) Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Coordinator within fifteen (15) calendar days of completion of the audit. Respondents must report serious deficiencies and corrective actions must be taken within twenty-four (24) hours of the time the Respondents knew or should have known of the deficiency. Corrective actions will be immediately taken.

(8) Provide data validation of analyses done by the laboratory(s) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, Respondents must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation

summary reports should be submitted, along with sample data and summary sheets, to the EPA Project Officer at the time final sample results are provided to EPA.

B. In the event that Respondents fail to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to conduct a complete RI/FS or any portion thereof pursuant to its authority under CERCLA, to seek reimbursement from Respondents for the costs incurred, and/or to seek any other appropriate relief.

#### XI. SITE ACCESS

A. Respondents do not presently own or control any property included in OU2. Respondents shall use best efforts to obtain Site access agreements from the present owners of such property within thirty (30) days of the effective date of this Consent Order. At a minimum, best efforts shall include, but shall not be limited to, a certified letter from Respondents to the present owners of such property requesting access agreements fulfilling the requirements of Paragraph B of this Section. In the event that the property owner refuses to provide such access or access agreements are not obtained within thirty (30) days of the effective date of this Consent Order, whichever occurs sooner, the Respondents shall immediately notify EPA, in writing, of all efforts to obtain access and the circumstances of their failure to secure access agreements.

B. All access agreements obtained pursuant to this Section shall provide reasonable access to Respondents and EPA, and their respective employees, agents, consultants, contractors, and other authorized representatives, to perform RI/FS activities. All such agreements shall additionally permit EPA to conduct all activities described in Paragraph C of this Section.

C. EPA and its employees, agents, consultants, contractors, and other authorized personnel shall have the authority to enter and freely move about all property subject to this Consent Order at all reasonable times for the purposes of, *inter alia*, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. In addition, EPA and its employees, agents, consultants, contractors, and other authorized personnel shall have authority to enter, at all reasonable times, all areas in which records related to the performance of the RI/FS are retained. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection or information

gathering authorities of EPA under Federal law.

D. In the event EPA takes over work pursuant to Sections VIII.B, VIII.C, or X.B of this Consent Order, Respondents agree to allow EPA and its employees, agents, consultants, contractors, and other authorized personnel access to any portions of the Morgantown Site under their ownership or control for the purposes of conducting the RI/FS for OU2 and to perform any activities described in Paragraph C of this Section.

E. If any Respondent acquires title to or control over any portion of the Morgantown Site to which it does not presently hold title or otherwise enjoy control, Respondents agree that EPA shall have access rights to such property as specified in this Section.

## **XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

A. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. Respondents shall additionally notify EPA and obtain EPA approval no less than fourteen (14) days prior to performing activities affecting ground water, which activities shall include, without limitation, installation of ground water monitoring wells, ground water monitoring and sample collection activities, ground water elevation tests, and aquifer tests. All notifications made pursuant to this paragraph shall identify the activities Respondents will conduct and the anticipated start and completion date of such activities.

B. Respondents shall make available to EPA the results of all sampling and tests performed pursuant to this Consent Order, and all other data generated by or on behalf of Respondents in connection with the implementation of this Consent Order. All such information shall be submitted to EPA no later than the due date for the first monthly progress report submitted following Respondents' receipt of such data.

C. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by Respondents pursuant to the approved WP.

D. The Respondents may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Analytical data shall not be claimed as confidential by Respondents. Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies the information or documentation when

it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to Respondents.

### XIII. RECORD PRESERVATION

A. EPA and Respondents agree to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession that relate in any way to implementation of the Consent Order, despite any document retention policy to the contrary. On or before the effective date of this Consent Order, Respondents shall collectively designate a custodian ["Custodian"] for all such records and documents and shall notify EPA of the identity of that custodian. Respondents may change the Custodian of records and documents upon written notification to EPA of such change.

B. Respondents shall collectively use their best efforts to obtain, and provide to the Custodian, copies of all documents relating in any way to OU2 and which are in the possession of their employees, agents, accountants, contractors, or attorneys. After expiration of the six (6) year document retention period, Respondents shall notify the EPA Project Coordinator at least thirty (30) days prior to the destruction of any documents relating to this Consent Order. Upon request by EPA, Respondents shall make available to EPA such records or copies of any such records which are non-privileged.

C. Respondents shall ensure that any agreement between Respondents and any agent, contractor, consultant, or other person retained to perform or oversee work pursuant to this Consent Order shall explicitly require said agent, contractor, consultant, or other persons to maintain and preserve, during the pendency of this Consent Order and for a minimum of six (6) years after termination of this Consent Order, all data, records, and documents within their respective possession which relate in any way to this Consent Order or to hazardous substance management and disposal at OU2.

D. Respondents shall not destroy any record relating to this Consent Order, including any document for which Respondents may wish to assert any privilege, until:

(1) Respondents are notified by EPA, in accordance with this Section, that EPA has waived its right to obtain each such record from Respondents. Such notice of waiver shall be deemed given on the ninety-first day following EPA's receipt, by certified mail, of the notice required in Section XIII.B of this Consent Order, provided that: (a) EPA has not responded to Respondents' notice of intent to destroy records, and (b) Respondents' notice to EPA expressly states that "failure to respond within ninety (90) days effects a waiver under Section XIII of the Consent Order;" or

(2) As to any document requested by EPA and for which a privilege has been asserted, EPA's right to obtain the document has been fully adjudicated (including any appeals).

E. Except as otherwise provided herein, neither agreement to, nor compliance with, the requirements of this Section shall constitute a waiver of any privileges Respondents might wish to assert over documents preserved, collected, or maintained by Respondents and/or requested by EPA.

#### **XIV. DISPUTE RESOLUTION**

A. In the event Respondents object to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Consent Order, Respondents shall provide EPA with written notice of their objection(s) ["Notification of Dispute"] within fourteen (14) days of Respondents' receipt of such notification of deficiency/disapproval or action. The Notification of Dispute shall set forth the specific points in dispute, the position Respondents maintain should be adopted and the bases therefore, and any matters Respondents consider relevant to the dispute.

B. EPA and the Respondents shall have fourteen (14) days from the date EPA receives a Notification of Dispute to reach agreement. EPA may, in its sole discretion, extend this period up to fourteen (14) additional days. If agreement cannot be reached on any issue within the designated period, EPA shall provide a written statement of its decision to the Respondents. Respondents shall thereafter immediately undertake to perform the work that was the subject of the dispute in accordance with EPA's decision.

C. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this Consent Order.

D. Invocation of the procedures set forth in this Section shall not excuse, toll, or suspend any compliance obligation or deadline established by or pursuant to this Consent Order.

E. Stipulated penalties for violations of this Consent Order shall continue to accrue during the pendency of a dispute. EPA may, in its sole discretion, defer demand of such penalties until the dispute is resolved in accordance with the procedures set forth herein and may, in its sole discretion, forego all or a portion of the penalties due and owing. Stipulated penalties shall not be owed or collectible to the extent Respondents prevail in the dispute.

**XV. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

A. For each day that the Respondents fail to submit a report or document or otherwise fail to comply with the requirements of this Consent Order at the time and in the manner set forth herein, or in the approved WP, the Respondents shall be jointly liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substances Superfund" and shall be forwarded to:

EPA, Region III  
Attention: Superfund Accounting  
Box 360515M  
Pittsburgh, PA 15251

All checks shall reference the name of the Site and the EPA docket number specified on the front page of this Consent Order. A copy of the transmittal letter and check shall be sent to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

B. Stipulated penalties shall accrue in the amount of \$1,000 per day for the first week, or any portion thereof, and \$2,000 per day for each week thereafter, or any portion thereof. Payment shall be due and owing within thirty (30) days from the date of receipt of EPA's demand letter. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period in conformance with United States Treasury Department regulations.

C. The accrual or assessment of, or demand for, stipulated penalties as provided in this Section shall not preclude EPA from pursuing other penalties or sanctions available to EPA at law for failure to comply with the requirements of this Consent Order.

D. Stipulated penalties shall begin to accrue on the date that complete performance of a specified task is due or a violation of this Consent Order occurs, and shall continue to accrue until the specified task is completed or the violation of this Consent Order ceases. EPA may in its discretion forego demand for payment of any stipulated penalty under this Section, or may delay demand until such time when EPA deems appropriate. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

E. If Respondents in good faith object to the imposition of stipulated penalties, Respondents may invoke the dispute resolution procedures of Section XIV of this Consent Order. Respondents shall not dispute the stipulated penalty rates established in Paragraph B of this Section. To the extent Respondents do not prevail upon

resolution of the dispute, Respondents shall pay all penalties owed within thirty (30) days of receipt of the resolution, which penalties shall include penalties accruing both prior to, and during, the period of dispute.

F. Neither the invocation of dispute resolution procedures nor payment of stipulated penalties shall in any way alter Respondents' obligation to comply with the requirements of this Consent Order.

#### **XVI. FORCE MAJEURE**

A. Respondents shall comply with the requirements of this Consent Order in accordance with the schedules established herein unless such performance is prevented or delayed by events constituting a **force majeure** within the meaning of this Section. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondents, which cannot be overcome by due diligence, and which delays or prevents performance by a date required by this Consent Order. **Force majeure** shall not include increased costs of performance of the requirements of this Consent Order; or changed economic circumstances. **Force majeure** may include delays caused by failure to obtain Federal, State, or local permits provided that Respondents prove force majeure and demonstrate that they have submitted all information and documentation required for applications for permits (and any supplemental information that may be requested) within a timeframe that would permit the work to proceed in a manner contemplated by the schedules contained in this Consent Order. Respondents shall have the burden of proving the existence of a **force majeure** event.

B. The Respondents shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible but no later than two (2) business days after any Respondent, or any of Respondents' agents or contractors, becomes aware (or, through the exercise of due diligence, should have become aware) of such delay or anticipated delay, and in writing no later than seven (7) days after becoming aware (or, through the exercise of due diligence, should have become aware) of such delay or anticipated delay. The written notification shall fully describe the nature of the delay; the reasons the delay is beyond the control of Respondents (if applicable); the actions that will be taken to mitigate, prevent, and/or minimize further delay; the anticipated length of the delay; and the timetable according to which the actions to mitigate, prevent, and/or minimize the delay will be taken. Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

C. Any delay resulting from a **force majeure** event shall not be deemed a violation of this Consent Order and shall not subject Respondents to liability for the stipulated penalties described in Section XV of this Consent Order. To the extent a delay is caused by a **force majeure** event, the schedule affected by the delay shall be extended by EPA, up to the length of the delay directly resulting from the **force majeure** event, in order to facilitate completion of the affected work on an expedited basis.

D. Failure of Respondents to comply with the notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

E. In the event that EPA and Respondents cannot agree that a delay in compliance with the requirements of this Consent Order has been or will be caused by a **force majeure** event, the dispute shall be resolved in accordance with the procedures established in Section XIV of this Consent Order. The Respondents shall have the burden of proving that the delay was caused by an event arising from causes not reasonably foreseeable and beyond the control of Respondents, and which could not have been overcome by due diligence. Respondents shall additionally have the burden of proving the necessity of the proposed length of the delay and that Respondents took all reasonable measures to avoid or minimize the delay.

F. Modifications to this Consent Order necessitated by events recognized by EPA as **force majeure** events shall be made pursuant to the procedures established in Section XXII of this Consent Order.

#### **XVII. RESERVATION OF RIGHTS**

A. Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, to seek injunctive relief, or to seek the imposition of statutory penalties.

B. Compliance with the terms of this Consent Order shall not relieve Respondents of the obligation to comply with applicable local, State, and Federal laws and regulations.

C. As provided by this Consent Order, EPA expressly reserves the right to disapprove of work performed by Respondents and to request that Respondents perform response actions in addition to those required by this Consent Order if EPA determines that such actions are necessary. In the event Respondents choose to perform such additional work, the approved WP shall be revised

to provide expeditious performance of the additional tasks. In the event that Respondents decline to perform such additional work, EPA reserves the right to perform such work and to seek reimbursement from Respondents for any costs incurred. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time such actions are appropriate under CERCLA and the NCP and to seek reimbursement for any costs incurred.

D. EPA reserves the right to bring an action against Respondents pursuant to CERCLA § 107, 42 U.S.C. § 9607, for recovery of all response costs, including costs specified in Section XVIII of this Consent Order, incurred by the United States in connection with this Consent Order and not reimbursed by Respondents, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at OU2.

E. Nothing in this Consent Order shall be construed to limit EPA's authority under CERCLA, RCRA, or any other statute or regulation to conduct inspections, enter premises, or gather information.

#### **XVIII. REIMBURSEMENT OF COSTS**

A. Each year, following the anniversary of the effective date of this Consent Order, EPA shall submit to the Respondents' Project Coordinator an accounting of all response and oversight costs incurred by the United States with respect to this Consent Order ["Accounting"]. Oversight costs shall consist of all costs incurred by EPA, its agents, contractors, and other authorized personnel in connection with EPA's oversight of the work to be done by the Respondents under the terms of this Consent Order. Such costs shall include, without limitation, time and travel costs of EPA personnel and associated indirect costs; costs incurred in compiling cost documentation; and costs associated with compliance monitoring activities including, without limitation, analysis of split samples, inspection of RI/FS activities, site visits, interpretation of Consent Order provisions, and review of reports. Respondents reserve the right to request access to documentation of EPA's oversight costs pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq.

B. Within thirty (30) days of receipt of each Accounting by Respondents' Project Coordinator, Respondents shall remit to EPA a check for the amount of the costs specified therein. Checks shall be made payable to the "Hazardous Substances Superfund," shall specifically reference the name of the Site and the EPA docket number specified on the front page of this Consent Order, and shall be forwarded to:

EPA, Region III  
Superfund Accounting  
Box 360515M  
Pittsburgh, PA 15251

A copy of the transmittal letter and check shall be sent simultaneously to the Region III Hearing Clerk at the address specified in Section XV.A of this Consent Order. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period in conformance with United States Treasury Department regulations. Invocation of the dispute resolution procedures established in Section XIV of this Consent Order shall not toll, suspend, or otherwise prevent the accrual of interest.

#### **XIX. OTHER CLAIMS**

A. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

B. This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

C. By consenting to the issuance of this Consent Order, the Respondents waive any claim to reimbursement they may have under section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

#### **XX. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations.

#### **XXI. PUBLIC COMMENT**

Upon approval by EPA of the RI/FS, EPA will make the administrative record for the proposed remedial action, including the RI/FS Report, available to the public for review and comment for, at a minimum, a thirty day period, pursuant to 40 C.F.R. § 300.430. Following the public review and comment period, EPA will notify the Respondents which remedial action alternative is selected for the Site.

**XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

A. The effective date of this Consent Order shall be the date on which an EPA-signed copy is received by Robert L. Collings, Esquire at Morgan, Lewis & Bockius; 2000 One Logan Square; Philadelphia, PA 19103-6993.

B. This Consent Order, including any deadlines or schedules contained herein, may be amended by mutual agreement of EPA and Respondents. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the requirements of the WP may be made by mutual agreement of the Project Coordinators. Such modifications shall be made by exchange of letters by the Project Coordinators and shall have as an effective date, the date on which the letter from EPA's Project Coordinator is signed.

C. Respondents agree that any request for modification of this Consent Order, whether by amendment or minor modification, shall be accompanied by a description of the impact(s) each modification shall have on the schedules contained in the approved WP. Following EPA approval of a modification to any schedule, Respondents shall promptly provide to EPA a revised WP schedule which shall reflect the approved modifications.

D. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and shall subject the Respondents to the requirements of Section XV of this Consent Order.

E. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by Respondents or the requirements of this Consent Order shall be construed as relieving Respondents of their obligation to obtain formal approval when required by this Consent Order.

**XXIII. TERMINATION AND SATISFACTION**

A. At such time when Respondents believe that all requirements of this Consent Order have been completed, Respondents shall provide EPA with a written request to terminate this Consent Order ["Termination Petition"].

B. Respondents' obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon Respondents' receipt of written notice from EPA, following receipt by EPA of a Termination Petition and issuance of a Record of Decision for OU2,

that the Respondents have demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed. Such notice shall not terminate the Respondents' obligations under Sections XIII (Record Preservation); XVII (Reservation of Rights); XVIII (Reimbursement of Costs); and XX (Other Applicable Laws) of this Consent Order.

**XXIV. LIABILITY OF THE UNITED STATES GOVERNMENT**

EPA shall not be deemed a party to any contract involving Respondents and relating to implementation of the requirements of this Consent Order and is not liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondents, or of its employees, agents, servants, receivers, successors, or assigns, or of any persons, including but not limited to contractors and consultants, in carrying out activities pursuant to this Consent Order.

**XXV. ADMISSIONS**

Nothing in this Consent Order is intended or shall be construed to be, an admission as to fact or law (including, but not limited to, EPA's findings, conclusions, and determinations set forth in Sections III, IV, and V of this Consent Order), an estoppel or a waiver of defenses by Respondents for any purpose other than enforcement of this Consent Order. Further, participation by Respondents in the RI/FS is not intended to be, and shall not be construed to be, an admission of fact or law with regard to any matter addressed by the RI/FS or an estoppel or a waiver of Respondents' right to challenge any aspect of the RI/FS as approved by EPA.

**XXVI. CONSTRUCTION OF "DAYS"**

Unless otherwise provided in this Consent Order, the term "days" shall mean calendar days.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT E. I. DUPONT DE NEMOURS & COMPANY:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT OLIN CORPORATION:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

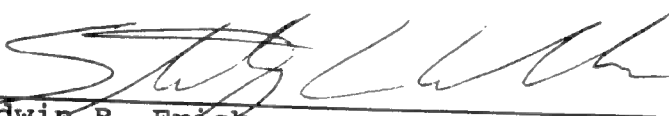
FOR RESPONDENT TENNECO POLYMERS, INC.:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

By:

  
Edwin B. Erickson  
Regional Administrator  
EPA Region III

Date:

6/4/90

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT E. I. DUPONT DE NEMOURS & COMPANY:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT OLIN CORPORATION:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT TENNECO POLYMERS, INC.:

By: AB Bonfante

Date: 4/13/90

RDJ  
HSD  
4-19-90

Title: VICE - PRESIDENT

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Edwin B. Erickson  
Regional Administrator  
EPA Region III

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT E. I. DUPONT DE NEMOURS & COMPANY:

By: George C. Tunis, Jr.

Date: 4/20/90

Title: Director Safety & Environmental Resources  
Director of Safety & Environmental Resources

FOR RESPONDENT OLIN CORPORATION:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT TENNECO POLYMERS, INC.:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

By: Edwin B. Erickson  
Regional Administrator  
EPA Region III

Date: \_\_\_\_\_

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT E. I. DUPONT DE NEMOURS & COMPANY:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR RESPONDENT OLIN CORPORATION:

By: Leon B. Anzures Date: 4-12-90

Title: Vice President, Urethanes

FOR RESPONDENT TENNECO POLYMERS, INC.:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

By: Edwin B. Erickson Date: \_\_\_\_\_  
Regional Administrator  
EPA Region III

ATTACHMENT A

For purposes of this Consent Order, the Morgantown Site shall include, at a minimum, all property within Monongalia County, West Virginia purchased by E.I. duPont de Nemours and Company between approximately 1940-1943 in connection with an agreement or agreements with the United States to obtain such property for purposes including the erection and operation of manufacturing facilities later known as the "Morgantown Ordnance Works." A location map is attached at Figure 1.

Docket No. III-90-16-DC

**ATTACHMENT B**

For purposes of this Consent Order, Operable Unit No. 2 of the Morgantown Site shall include all property within the Morgantown Site, as defined in Attachment A to this Consent Order, excluding property for which remedial actions were selected for implementation by EPA in the "Record of Decision for Ordnance Works Disposal Areas Site Operable Unit No. 1" (September 29, 1989). That Respondents have been, and may in the future be, relieved of the obligation to perform RI/FS work in certain areas pursuant to Section VIII.A of this Consent Order does not remove such areas from the Morgantown Site.

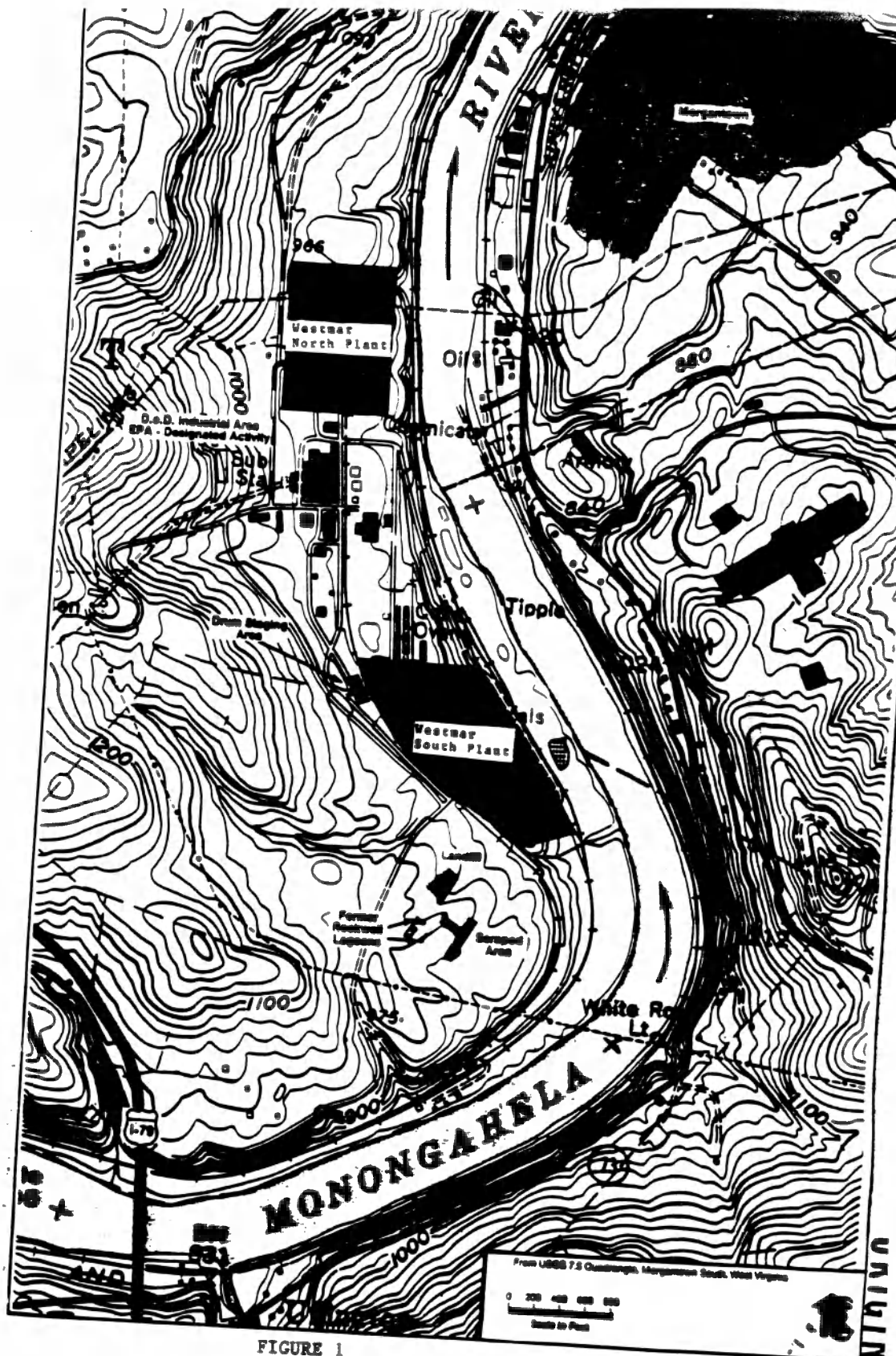


FIGURE 1